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JUN - 6 2007

Federal Communications Commission
Office of the Secretary

DUPLICATE

BEFORE THE

Federal Communications Commission

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

PETITION TO FILE THIRD SUPPLEMENT TO REPLY COMMENTS AND THIRD SUPPLEMENT

Mt. Wilson FM Broadcasters, Inc. (hereinafter "Mt. Wilson") timely filed Reply Comments on January 16, 2007.[1] Subsequently, Mt. Wilson filed a "Petition to File Supplement to Reply Comments" on February 2, 2007 and a Petition to File Second Supplement to Reply Comments on February 20, 2007. The February 2, 2007 Supplement revealed that Clear Channel controlled four XM satellite music channels, a relevant fact never mentioned in the Clear Channel pleadings (source – <u>Detroit News</u>

[1] Mt. Wilson Reply Comments to Clear Channel Comments.

article dated February 1, 2007); the Second Supplement (based on a February 15, 2007 conversation between the Mt. Wilson President and a former Clear Channel employee with first-hand knowledge of Clear Channel's XM operations) revealed that Clear Channel operates a total of nine XM commercial satellite channels.

The Third Supplement (the instant pleading) is based on a telephone interview with Clear Channel Radio Chief Executive John Hogan and was reported on the Forbes Web site May 25, 2007 Home Page issue (copy attached). Mr. Hogan states

> "We're in the satellite business we own a [3% stake in] XM Satellite Radio (nasdaq:XMSR – news - people). We currently program. . . [10] radio stations on XM, that's one of our distribution platforms. . . . I'm sort of underwhelmed by satellite. I think what they have is a lot of really interesting channel titles. But when you listen to them, there's not much there. There certainly isn't much variety, and what I think is really the essence of radio – that is, what is between the records – is really pretty lame."

Summarizing Hogan's statement, Clear Channel owns 3% of XM Radio, operates 10 XM radio stations (channels) on XM satellite radio and does not believe that XM is programming its channels in a meaningful way.[2]

Clear Channel is an advocate for raising radio ownership limits. The Clear Channel Comments/Reply Comments, however, fail to mention the Clear Channel ownership stake in XM radio and fail to mention that Clear Channel programs 10 radio stations on XM radio.[3] Moreover, whereas the Clear Channel Comments describe

[2] Hogan's statement that Clear Channel programs 10 radio stations confirms the basic information contained in the Mt. Wilson First and Second Supplements.

[3] Hogan's precise verbiage states "We currently program... [10] radio stations on XM. . . ."

satellite radio as the prime example of new technology competition to over-the-air free radio (Clear Channel Comments, at p. 51)

> "Today, free, over-the-air radio faces many more competitive threats... and the competition comes from media that are not crippled by the regulations that stifle the industry. In every single local market, satellite radio companies... together deliver 270 channels.... These competitive challenges – and the inequities imposed by the local radio caps – are currently threatening the ability of free over-the-air radio to remain viable."

Hogan's opinion essentially downgrades XM radio programming other than the 10 stations programmed by Clear Channel.

As previously noted, Clear Channel has never disclosed in this proceeding that it operates 10 XM satellite channels or has an ownership interest in the new technology that threatens free over-the-air radio – an argument urged as the justification for raising the radio ownership limits. The reasonable conclusions derived from the omitted facts and the conduct of Clear Channel are as follows:

1. The failure to disclose satellite radio interests in this proceeding and to characterize satellite radio both as a threat to free over-the-air radio and as a justification for raising radio ownership limits is disingenuous, not smart, not clever, simply disingenuous;

2. The failure to disclose the satellite radio interests in the context of a rulemaking proceeding pertaining to radio ownership limits demonstrates excessive advocacy equating to a lack of candor;

3. The 10 XM radio stations programmed by Clear Channel negate the Clear Channel arguments for raising radio ownership limits and, indeed, evidences that Clear Channel is in violation of the existing radio ownership rules in every market where Clear Channel and XM radio collectively provide radio service;[4]

[4] Operation of multiple stations by the same entity adversely affects competition – irrespective of whether satellite radio stations (or HD-2 stations) are deemed attributable interests.

4. There is an obvious "disconnect" between the arguments set forth in the Clear Channel Comments/Reply Comments and the statements of Clear Channel executives, thereby undermining the credibility of the Clear Channel pleadings.

The "good cause" for filing all of the Supplements are relevant facts pertaining to Clear Channel's operation of XM satellite radio channels and Clear Channel's ownership interest in XM Satellite Radio facts pertinent to the instant Rulemaking proceeding, facts never mentioned in the Clear Channel pleadings and facts which were not known to Mt. Wilson until dates subsequent to January, 2007. The information provided in the First and Third Supplements are based on publications. Indeed, the information provided in the Third Supplement is based on an interview with the Clear Channel CEO and confirms both Clear Channel's operation of multiple XM satellite channels and Clear Channel's XM ownership interest. Whether the radio ownership limits should be modified to allow an increase, a decrease, or remain as now promulgated, the matter of <u>competition</u> is irrevocably interwoven with ownership limits. Clear Channel operation of 10 XM satellite channels, multiple HD channels (including HD-2 and HD-3 channels which provide (or are capable of providing) separate program streams) exacerbates an <u>existing competitive advantage</u> and are clearly relevant to the issues in this proceeding, i.e., it reasonably can be assumed that satellite radio channels are available to Clear Channel advertisers, are utilized as an enticement to advertisers and that Clear Channel derives remuneration from the operation of the satellite radio channels – or, as Mr. Hogan succinctly stated, the ". . . satellite business . . ., that's one of our distribution platforms. . . ." Aside from the obvious adverse impact on competition and the other free over-the-air radio operators, the Commission should not ignore the Clear Channel lack of candor in evaluating the merit of the Clear Channel pleadings.

Respectfully submitted

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<u>FORBES</u> MAY 25, 2007 WEB SITE ARTICLE "RADIO REDUX"

TO: ROBERT JACOBI

Q&A

Radio Redux

Louis Hau 05.25.07, 6:00 AM ET

courtesy of Clear Channel

"I have really got to jump," Clear Channel Radio Chief Executive **John Hogan** says after a half-hour phone interview. Given all that he has on his plate, it's hard to blame him.

Amid a sluggish radio advertising market, Clear Channel has been leading efforts to move away from traditional 60-second ad spots to reduce on-air promotional "clutter." In addition to drastically retooling programming and playlists in some markets, it agreed earlier this year to begin using, albeit with some reluctance, **Arbitron's** (nyse: ARB - news - people) new Portable People Meter, an electronic audience-measurement system aimed at replacing paper diaries.

And the nation's largest radio company created waves last month when it signed a multi-year deal with **Google** (nasdaq: GOOG - news - people) that will enable the search giant to sell advertising on its radio stations.

If all that wasn't enough, Clear Channel is in the midst of streamlining its station holdings, having inked deals to sell more than 360 radio stations outside its top 100 markets. Meanwhile, parent company **Clear Channel Communications** (nyse: CCU - news - people) is awaiting shareholder approval on a board-approved bid from Thomas H. Lee Partners and Bain Capital Partners to take the company private for $26 billion. The private-equity firms haven't said much about their plans for the company, but have expressed support for the current management team led by founder and Chairman Lowry Mays.

In an interview, Hogan talked about what Clear Channel is doing to revitalize station formats, downplayed concerns among some radio executives about Google's entry into radio advertising and argued that "there certainly isn't much variety" on satellite radio.

I listen to music every spare moment I have, but I haven't listened to music on FM radio on a daily basis since the mid-'90s. The programming had become predictable and repetitive and there are now so many other options available through which to access music. What does the radio industry have to do to bring back listeners like me?

The description of your situation is all too real for a lot of folks in radio. We've taken what I think are some pretty important steps to re-engage consumers with radio. A little over three years ago, we made a commitment throughout the company to become listener-centric.

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Unfortunately, we had become broadcaster-centric. We were programming radio stations as if they were listened to by a lot of program directors, not by consumers. We have strongly encouraged our program directors to first and foremost recognize that consumers do have a lot more choices today. We have to be that much more interesting, we have to be that much more engaging.

I'll give you a very specific example of what we're doing. In Dallas, we took a [classic-rock] radio station called KZPS [FM-92.5] that we recognized wasn't unique, it wasn't doing anything for a listener that they couldn't get somewhere else. So what we did was we blew it up. We encouraged the programming and promotions team to come up with a brand new radio station.

That's what they've done. It's [now] an outlaw country radio station. You'll hear artists on there that you won't hear on any other radio station in Dallas, and that you may not hear on any other radio station in Texas or across the country. You will hear hosts and personalities that live the music, know the music. They're part of that lifestyle. You'll hear a lot of information and insights into the music and the artists.

Much of what you're describing sounds like the kind of thing you might hear on satellite radio. How much has satellite radio influenced the programming decisions you've been making of late?

Satellite actually has not influenced us at all--consumers have. We've done an enormous amount of consumer research. We've researched into how they view radio, how they use radio, how they use other media, where they're consuming music and entertainment, what's important to them. What you're hearing on our radio stations and hearing and seeing on our Web sites is really a reflection of consumers, and not of a competitor.

We're in the satellite business, we own a [3% stake in] **XM [Satellite Radio]** (nasdaq: XMSR - news - people). We currently program ... [10] radio stations on XM, that's one of our distribution platforms. I think that the stations we're programming on XM are far and away the best programmed and the best produced. I'm sort of underwhelmed by satellite. I think what they have is a lot of really interesting channel titles. But when you listen to them, there's not much there. There certainly isn't much variety, and what I think is really the essence of radio--that is, what is between the records--is really pretty lame.

You've substantially reduced the ad time on your stations under your "Less Is More" initiative to replace 60-second ads with shorter spots. How is that progressing?

It has progressed unbelievably well for us. When we launched L.I.M., we were selling an idea that was very innovative for the radio industry. Sixty-second commercials had been the currency for a long, long time. There were a lot of people who didn't understand what we were doing or how it would work.

Not only are we selling [30-second spots], we're also selling 15's, five's and one-second spots called blinks. What I think is really interesting about that is that the one- and five-second blinks were not something that we came up with. They were in response to requests from advertisers. Roughly 40% of our inventory is now sold in spot lengths less than 60 seconds. It continues to grow. A year ago, it was around 35%. Two years ago, it was around 20% to 25%.

What do you think of the concerns among some radio executives about Google's entry into the radio advertising market?

They do not have the systems or the ability to know what their inventory is, and without that diagnostic ability, they can't possibly do a deal like we've done with Google. The fact that we have systems that allow us to know in real-time across every one of our radio stations exactly what is available for sale, what has been sold, what's left to be sold, what the pricing is--it gives us an enormous position of intelligence.

There is no risk for us in the Google deal. There's no risk because we have complete insight in what happens at our radio stations in terms of inventory and pricing. Google's not interested in co-opting our advertisers. They're looking at expanding the advertiser base.

After voicing concerns about the effectiveness and cost of Arbitron's Portable People Meter, Clear Channel agreed earlier this year to use the system in Philadelphia. Now that you're on board with PPM, how quickly do you expect to adopt it in other markets?

It depends on how quickly they commercialize it in other markets. We continue to have concerns about the PPM methodology and reliability, as well as the price. We are a very, very strong proponent of electronic measurement [but] it's baffling why in this instance, technology is making things more expensive, rather than less expensive.

We continue to talk with Arbitron and we've shared these same concerns with them. I'm not particularly impressed with it thus far. They're showing an increase in the number of listeners and a significant decrease in the amount of time people are spending with radio. I question the methodology. I question the way they assemble a [listener] panel. I question their ability to accurately reflect black and Hispanic listening.

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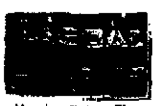
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